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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re A.R. et al., Persons Coming Under
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

S.R. et al.,

Defendants and Appellants.

C063964

(Super. Ct. Nos.
JD227339, JD227340)

S.R. and M.R., father and mother of minors A.R. and L.R., appeal from the juvenile court's orders denying their petitions under Welfare and Institutions Code section 388 (unspecified statutory references that follow are to the Welfare and Institutions Code) and terminating their parental rights. Both parents contend the court abused its discretion by denying their section 388 petitions and by finding that the beneficial parental relationship exception to adoption did not apply. Both parents also join in each other's contentions so far as

applicable, and each contends that reversal as to one compels reversal as to the other. We affirm the judgment.

FACTS AND PROCEEDINGS

On April 18, 2008, the Sacramento County Department of Health and Human Services (the Department) filed section 300 petitions as to A.R. (a 10-month-old female) and L.R. (a two-year-old female), alleging: (1) the parents had committed domestic violence in the minors' presence, most recently on April 5, 2008; (2) father was presently detained for inflicting corporal injury on a spouse or cohabitant; (3) mother had a substance abuse problem with amphetamine, methamphetamine, and marijuana dating back at least to 2006, both minors had tested positive for controlled substances at birth (marijuana and Valium as to A.R., marijuana as to L.R.), and mother had tested positive for unprescribed Valium at the time of A.R.'s birth; (4) father had a substance abuse problem with marijuana, alcohol, and Hydrocodone; (5) both parents had failed to participate in informal services.

The detention report filed April 23, 2008, added: Mother said in June 2007 that she was diagnosed with "[b]ipolar [d]epressive [d]isorder" and was prescribed Prozac for depression five years earlier; however, she failed to follow through with drug and mental health services provided by the Department. The parents signed a Corrective Action Plan in February 2008, but kept missing appointments. Father was still incarcerated on charges arising out of the April 5 domestic

violence incident. Two older half siblings currently resided with the maternal grandmother.

On April 25, 2008, the juvenile court ordered the minors detained and placed together in foster care.

The jurisdiction/disposition report recommended that the minors be adjudged dependents of the juvenile court and remain in out-of-home placement, with reunification services to be offered to both parents.

According to the report, mother claimed the triggering domestic violence incident was the first and was not as bad as alleged; however, after father was jailed she took the minors and moved, then got a restraining order against him. She and father were not married, but had been in a relationship for three years until this incident. She denied a substance abuse problem, claiming she had tested positive for methamphetamine and marijuana because she had been around users; however, she had participated in all drug-related services offered her. She said father had a substance abuse problem, but had not been referred to services. She would begin taking parenting classes soon. She wanted the minors back.

Father agreed with mother's characterization of the domestic violence incident. He opined she did not have a substance abuse problem. He did not consider himself an addict, but admitted using marijuana and alcohol and getting in trouble whenever he drank. He claimed he had not been offered alcohol and drug services. He said the social worker, knowing the parents needed transportation to services, had failed to help.

Father was willing to participate in services, but expected to be incarcerated for four or five months. He had been unemployed since June 2007.

The social worker who had worked with the parents on informal supervision indicated that they often missed appointments and made excuses. Mother was dishonest and secretive. It was not true that the social worker had failed to help with transportation. The parents' home was clean, and the minors were clean, well fed, and never left alone; however, there had been multiple instances of domestic violence.

Law enforcement had been called to the parents' residence five times in the past year. On April 5, 2008, after the parents had been drinking, father got upset and started hitting and punching mother, who was holding the infant A.R.; father hit mother so many times she lost count, knocking her out twice; when she woke up and found him gone, she locked the door and called law enforcement. Mother said father threatened every day to kill her if she left him.

Father had pleaded no contest to felony corporal injury on a spouse or cohabitant. He would be incarcerated for 180 days, consecutive to time he was serving for driving under the influence.

Both parents had drug tested negative since February 2008.

The maternal grandmother said mother had a history of using drugs and picking the wrong men; she did well with one child at a time, but if she had more she became depressed and

"disconnected." Father used marijuana and alcohol and had three DUI's.

The minors were doing well in foster placement. Mother had supervised visitation twice a week, which she and the minors enjoyed. Mother told them how much she missed them and loved them.

On June 9, 2008, at the jurisdictional hearing, the parents submitted on the social worker's report. The juvenile court sustained the petitions and set the matter for dispositional hearing.

An addendum report filed June 20, 2008, stated that mother had been thrown out of the maternal grandmother's home and was incarcerated for drug possession.

At the contested dispositional hearing on August 22, 2008, the juvenile court ordered that the minors continue in their current placement and the parents receive reunification services and visitation. The court found both parents' progress "minimal."

The six-month status review report recommended terminating both parents' services. The minors continued to thrive in their placement, and the foster parents were interested in adoption. Mother's visitation had been sporadic over the last six months; father had had no visitation until September 2008 while in custody, and then repeatedly missed visits after his release. The minors did not seem excited to see father, and mother was not very attentive during her visits. During the last six months, mother had failed to keep in contact with the

Department, and there was no evidence (aside from negative drug tests in September 2008) that she had participated in services. Father's present living arrangements were unknown, and he had just begun to participate in services after his release from jail; his only confirmed participation consisted of an alcohol and drug assessment and two drug tests in the last two months. Neither parent had shown the ability to follow through with case plan objectives, to maintain a safe and stable home for the minors, or to rectify the problems that brought about the dependency.

An addendum report filed December 31, 2008, stated that father reported obtaining secure housing after a period of homelessness and had begun to participate in individual therapy and anger management classes in December 2008.

At the six-month status review hearing on January 5, 2009, the juvenile court terminated mother's services, but continued father's services for six months because he had not yet received reasonable services.

The permanency review report, dated June 5, 2009, recommended terminating father's reunification services and implementing a permanent plan of adoption. During the last six months, mother had failed to visit the minors regularly and the quality of her visits had been poor; she also failed to give accurate information to her therapist and the social worker. Father was again incarcerated due to a domestic violence incident in March 2009, and was not scheduled for release until September 2009; consequently, he had not been able to engage in

services. Father and mother had had one of the minors' half siblings residing with them for several weeks, in violation of an El Dorado County juvenile court order.

At the contested permanency review hearing on July 9, 2009, the juvenile court terminated father's reunification services, ordered adoption as the permanent plan, and scheduled a selection and implementation hearing.

The selection and implementation report stated that the minors were generally adoptable and had been living for a year and a half in a home approved for adoption. Because mother and father had failed to separate after mother's services were terminated, father could not be considered for unsupervised visits. Father's new domestic violence against mother in March 2009 had caused his reincarceration until September 2009. Mother had not visited the minors regularly, and reports of her visits showed there was no significant relationship between her and either minor. Reports of father's visits indicated that L.R. appeared to recognize him as her father, while A.R. seemed more hesitant in interacting with him; but any negative effects from termination of parental rights would be far outweighed by the benefits of adoption. Termination of parental rights for both parents was recommended.

On November 17, 2009, mother filed petitions to change the court's order (§ 388) as to both minors, seeking either to vacate the selection and implementation hearing and regain custody of the minors under dependent supervision, or to reopen reunification services.

To show changed circumstances, mother alleged:

In April 2009, she gave birth to the minors' sibling, Al.R., who remained in her care. Since the end of July 2009, mother had participated in all available services, including drug testing, AA/NA meetings, the STARS program, dependency drug court, and parenting classes (though she had had to take a break in the latter due to the infant's hospitalization). Mother was on the waitlist for domestic violence classes at WEAVE. She visited the minors once a month; they called her "Mom." The visits went well, and mother believed she and the minors were bonded.

To show that a changed court order would serve the minors' best interests, mother alleged that it was in their best interests to be united with their new sibling and to be raised by their biological parent. She believed she had gained the skills needed to provide them a safe and nurturing environment and that they were bonded with her.

On December 1, 2009, father also filed section 388 petitions, seeking the same alternative changed orders (return of the minors to father under dependent supervision or reopen reunification services).

In support, father alleged: He had continued to participate in services on his own, attending parenting classes and AA/NA meetings. He was trying to get into individual counseling. He visited the minors regularly and believed they saw him as their father.

At the consolidated hearing (§§ 388/366.26) on December 22, 2009, mother did not testify or present evidence.

Father testified that he was attending parenting classes once a week and going to AA/NA meetings regularly. He had been clean and sober since his release from custody in September 2009. He visited the minors once a month; he played with them, changed their diapers, interacted with them, and read to them. They would come up to him and call him daddy; they would not want to go when the visits ended.

Counsel for both parents stated that each parent supported the other's petition if his or her own were not granted.

The juvenile court ruled:

"These children have been in the current placement for a year and a half. While they may enjoy the visits with the father and undoubtedly the mother, the fact of the matter is the stability they've had for the last year and a half comes from the fact they've had good care where they've been, and that has been necessitated by these children having to be taken away from the parents.

"At this point, my focus has to be on [the minors].

"I commend both of you for continuing in services. Certainly, you have another child to consider. It is good to hear that that child is able to stay home, and I hope that that continues, but certainly the services that you're participating in now are necessary for that to occur, so I certainly would encourage you and hope that you would stick with it so that Al[.] can stay home.

"But that does not help me with L[.R.] and A[.R.] They have been out of the home for too long. They have a stable bonded relationship with the caretakers, and it appears to me that it would be contrary to their interests to vacate the selection and implementation hearing, to reopen services, or to place either of these children with either of the parents. So I'm denying both of the requests to change the court order, and I am also finding that it is in the children's best interests to adopt the recommendations to terminate parental rights and free these children for adoption."

The juvenile court thereafter made the orders from which the parents appeal.

DISCUSSION

I

The Section 388 Petitions

Both parents contend the juvenile court abused its discretion by denying their section 388 petitions. We disagree.

A petition to modify a juvenile court order under section 388 must allege facts showing that new evidence or changed circumstances exist, and that changing the order will serve the minors' best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1).) In assessing the petition, the court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

We review for abuse of discretion the denial of a section 388 petition after an evidentiary hearing. (*In re S.R.* (2009) 173 Cal.App.4th 864, 866.) This means that we reverse only if under all the evidence (including reasonable inferences from the evidence), viewed most favorably to the ruling, no reasonable judge could have made that ruling. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) In other words, where the evidence conflicts, we reverse only if the evidence compels a finding for the appellant as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527-1529.)

To decide whether the parents met their burden, the juvenile court had to consider such factors as the seriousness of the problem which led to the dependency, and the reason for the problem's continuation; the strength of the relative bonds between the dependent children to parents and caretakers; and the degree to which the problem may be and has been removed or ameliorated. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1229; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) Considering these factors, the parents failed to meet their burden. Neither parent offered solid evidence that they had overcome the problems--substance abuse and domestic violence--which led to the dependencies. Furthermore, neither parent showed bonds with the minors that outweighed those of the prospective adoptive parents.

As to substance abuse, though both parents alleged they had recently participated in services, neither produced evidence of lasting sobriety. Father claimed sobriety only since

September 2009, a mere three months before the section 388 hearing. (Cf. *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 423 [seven months of drug rehabilitation did not outweigh long history of addiction and relapses].) Mother did not even claim that much--she did not cite any alleged "clean and sober" date.

As to domestic violence, though mother originally vowed not to reunite with father after his arrest and incarceration, she broke that vow and reunited with him after his release. Father then committed a new act of domestic violence and was incarcerated again. And neither parent even claimed to have yet participated in services designed to deal with this problem: mother claimed only to be on the waitlist for WEAVE, and father claimed only to be seeking counseling.

Finally, though the parents claimed to have had good visits with the minors recently and to be bonded with them, the juvenile court reasonably could conclude that at this stage of the proceedings this evidence did not outweigh the fact that the minors (L.R. two years old when removed from the parents' custody and A.R. less than a year old) had lived happily for a year and a half in the home of foster parents who wanted to adopt them and had already been found qualified to do so. For that reason, as the juvenile court explained, the parents also failed to show that a change in the juvenile court's orders would be in the minors' best interests.

The parents' contrary arguments amount to citing their own evidence and claiming that it compelled the juvenile court to rule in their favor. This method of argument ignores our

standard of review. Even if the juvenile court might have ruled differently, that is not enough to show the court abused its discretion.

II

The Beneficial Parent-Child Relationship Exception

Father contends the juvenile court erred by finding that the beneficial parent-child relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. The court did not err.

At the selection and implementation hearing, the juvenile court must choose one of four alternative permanent plans for a minor; the permanent plan preferred by the Legislature is adoption. If the minor is adoptable, the court must terminate parental rights absent a showing of detriment to the minor. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

The parent has the burden of establishing that a statutory exception to adoption applies. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809; Cal. Rules of Court, rule 5.725(e)(3).) We uphold a juvenile court's ruling declining to find such an exception if the ruling is supported by substantial evidence. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 809.)

To prove that the beneficial parent-child relationship exception applies, the parent must show that he or she "ha[s] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

(§ 366.26, subd. (c)(1)(B)(i).) It is not enough simply to show "some benefit to the child from a continued relationship with

the parent, or some detriment from termination of parental rights." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349.) There must be a significant, positive emotional attachment between parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) But even this is insufficient to defeat adoption if a child looks to a prospective adoptive parent to meet his or her needs. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.)

"Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) This is not such a case. As we have already suggested, even if father's claim of a beneficial relationship is taken at face value, the juvenile court reasonably could find that it did not outweigh the fact that the minors, who had lived outside father's custody for most of their lives, were fully bonded to their prospective adoptive parents and looked to them to meet the minors' needs. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.)

III

Reversals

Father contends that if mother's appeal is successful, the reversal of the judgment terminating his parental rights would also be required. Mother makes the same contention as to

father's appeal. But since we have not found grounds for reversal as to either parent, this contention fails.

DISPOSITION

The judgment (orders denying section 388 petitions and terminating parental rights) is affirmed.

_____, J.
HULL

We concur:

_____, P. J.
SCOTLAND

_____, J.
RAYE